given to the Jews in the old dispensation do not form the basis of any legal code in Christendom, and to select one commandment and leave the others out is manifestly absurd. It is to be hoped that, not alone from the chance of condemning a wrong party, but from general motives of humanity, and a consideration of the utter uselessness of public executions in the way of example, capital punishment will ere long be numbered among the extinct barbarisms, and other and more rational means adopted for maintaining the integrity of the law and the peace of society.

J. F. B.

Supreme Court of Pennsylvania.

ANN KLINE *v.* SAMUEL KLINE ET AL.

An ante-nuptial contract between husband and wife, in respect to the disposition and enjoyment of their respective estates, is one in which both parties should exhibit the utmost good faith; and any designed and material concealment ought to avoid the contract at the will of the injured party.

THIS was a writ of error to the Common Pleas of *Montgomery county*.

In the court below it was an issue directed to try the validity of a certain writing, called an ante-nuptial contract, made between Gabriel Kline and Ann Hendricks.

The plaintiff in error is one of the parties to the agreement, and is the widow of said Gabriel Kline, who died in the year 1867. His widow claimed her share of his estate. Her demand was opposed by the children of decedent, and an ante-nuptial agreement, dated March 21st 1850, presented as a bar to her claim.

This agreement was made under the following circumstances: Ann Kline, then Ann Hendricks, was employed by the decedent, after the death of his first wife, as housekeeper. Shortly after her assumption of this position, the decedent proposed to marry her, and was accepted. The decedent then called alone upon a justice of the peace, living in the vicinity, and employed him to write what he called a "marriage agreement." After it was written, the justice and decedent went over to decedent's house, where Ann Hendricks, his intended wife, was. The agreement

did not show that Kline owned any property but the house he lived in, worth about $800, but his real and personal estate was then worth at least $12,000. The instrument was read to her in English (she being entirely unable to speak or understand the language), and parts of it were then translated to her in German. She executed the paper, confiding altogether in the honesty and integrity of her intended husband. Nothing was said to her as to the property owned by him, nor as to what her rights would be as his widow. She was not told, and did not know, that her separate property would be her own as fully after marriage as before. She executed the paper by making her mark, being unable either to read or write. They were married at once, and lived together as man and wife from that day until the death of the husband.

By the agreement, the widow was only entitled to the household goods which constituted her own separate estate before her marriage, "the use of the north end of the dwelling-house so long as she remains my widow," "kitchen on first floor, one room and entry on second floor, half of the garden, and water out of the well," "also forty dollars per year during her natural life."

The decedent's estate amounted to about $17,000.

On the trial it was contended by plaintiff in error that a confidential relation existed between Gabriel Kline and her, and that it was incumbent on the defendants in error to show that Gabriel Kline fully informed her of the amount and extent of the property owned by him before the execution of the agreement.

This the presiding judge negatived, and charged that "the woman was bound to exercise her judgment and take advantage of the opportunity that existed to obtain information; if she did not do so, it was her own fault. The parties were dealing at arm's length. He was not bound to disclose to her the amount or value of his property."

This charge was assigned for error.

G. R. Fox and *C. Hunsicker*, for plaintiff in error.

B. M. Boyer and *D. H. Mulvany*, for defendants in error.

The opinion of the court was delivered by

SHARSWOOD, J.—Upon a question arising in the Orphans'

Court as to the right of the widow of Gabriel Kline to any share of his estate, an issue was directed to try the validity of an ante-nuptial contract between her and the intestate, dated March 21st 1850, by which it seems to have been assumed that she had by anticipation renounced or released all her rights as widow. Whether the instrument does bear that meaning is a question which does not arise on this record, has not been argued, and upon it, we desire to be understood, there is no opinion either expressed or to be implied in the judgment we now enter. The deed was executed by the parties a very short time before their marriage, and it was alleged on behalf of the widow that the circumstances of her intended husband were concealed from her and misrepresented in the writing itself, in consequence of which she was induced for a very inadequate consideration to subscribe it. Evidence tending to show this was given. It was contended on her part that it was incumbent on the plaintiffs in the issue to show that Gabriel Kline fully informed her of the amount and extent of the property owned by him. Had the judge contented himself with giving a simple negative to this proposition, it would perhaps have been unexceptionable. But his charge was much broader, for he instructed the jury that "the woman was bound to exercise her judgment and take advantage of the opportunity that existed to obtain information; if she did not do so, it was her own fault. The parties were dealing at arm's length. He was not bound to disclose to her the amount or value of his property." This part of the charge was excepted to, and is assigned for error.

There is perhaps no relation of life in which more unbounded confidence is reposed than in that existing between parties who are betrothed to each other. Especially does the woman place the most implicit trust in the truth and affection of him in whose keeping she is about to deposit the happiness of her future life. From him she has no secrets; she believes he has none from her. To consider such persons as in the same category with buyers and sellers, and to say that they are dealing at arm's length, we think is a mistake. Surely when a man and woman are on the eve of marriage, and it is proposed between them, as in this instance, to enter into an ante-nuptial contract upon the subject of "the enjoyment and disposition of their respective estates," it is the duty of each to be frank and unreserved in the disclosure of all

circumstances materially bearing on the contemplated agreement. It may perhaps be presumed in the first instance that such disclosure was made, but any designed and material concealment ought to avoid the contract at the will of the party who has been injured. Neither Judge Story, nor any other elementary writer, has pretended to give an exhaustive catalogue of those confidential relations which require the utmost good faith (*uberrima fides*) in all transactions between the parties: 1 Story's Eq. § 215. That distinguished jurist, in commenting upon the class of cases in which secret and underhand agreements, in fraud of marital rights, have been relieved against in equity, remarks, that while they are meditated frauds on innocent parties, and upon that account properly held invalid, yet that the doctrine has "a higher foundation, in the security which it is designed to throw round the contract of marriage, by placing all parties upon the basis of good faith, mutual confidence, and equality of condition:" 1 Story's Eq. § 267.

If, indeed, this agreement was intended to debar the wife of all future right to any share of her husband's estate in case she survived him, it was a most unequal and unjust bargain. It holds out the idea in the recital that his only property was the house and lot he then occupied, while the jury might have inferred from the evidence that he was worth at that time ten times its value. It bestows on her a portion of the house for life, with her own household goods which she owned before marriage, and the small annuity of $40 a year, or about eleven cents a day, to feed and clothe her, to find medical attendance and nursing for her when sick, and to bury her decently when she died. If, as has happened, she should find herself a solitary widow, without children, at the advanced age of seventy, such a pittance leaves her to be an object of private charity or public relief. To say that she was bound when the contract was proposed to exercise her judgment, that she ought to have taken advantage of the opportunity that existed to obtain information, and that if she did not do so it was her own fault, is to suggest what would be revolting to all the better feelings of woman's nature. To have instituted inquiries into the property and fortune of her betrothed would have indicated that she was actuated by selfish and interested motives. She shrank back from the thought of asking a single question. She executed the paper without hesitation and

without inquiry. She believed that he would propose nothing but what was just, and she had a right to exercise that confidence. She lived with him seventeen years, for aught that appears, as an affectionate and faithful helpmeet, and no doubt largely assisted in accumulating the fortune, at least of $15,000, of which he died in possession according to the evidence. We think there was error in the charge, and accordingly

Judgment reversed, and *venire facias de novo* awarded.

Supreme Court of Pennsylvania.

CHRISTIAN KOENIG *v.* ANNA R. SMITH.

A trust created before the Act of 1848 to protect a married woman's property from her husband, to determine in case she *survives* him, is determined by a divorce *a vinculo*.

THIS was a petition, filed by Anna R. Smith in the Orphans' Court of Berks county, to compel the plaintiff in error, who was her trustee under the will of her father, to file an account and pay over the funds in his hands.

By his will, made in 1845, the father of the appellee made provision for the conversion of all his personal estate into money, and for the disposition of all his realty, at certain stipulated prices. He then directed that the proceeds of all his real and personal estate should be equally divided among all his children, or their heirs, except that his daughter Nancy, the appellee, should receive $200 less than either of the others. But as she was then intermarried with Thomas Smith, in view of her coverture the testator added the following: "I authorize and empower Christian Koenig, of Bern township, as trustee over all the full share and legacy and property which I may give unto my daughter Nancy. And I do hereby give and bequeath into the hands of said trustee, for the use and benefit of my said daughter Nancy and her children, the house and lot situate opposite Darrah & Young's steam-mill, in Maiden Creek township, Berks county, which I bought at sheriff's sale, which property shall be put unto her for the same as it cost me, and the balance of her legacy shall be put on interest for my said daughter, and the interest is to be